

**REMARKS**

***Status of Claims***

Claim 23 is currently amended.

Claims 1-22 and 32 have been previously canceled.

Claims 33-36 are currently canceled.

Thus, claims 23-31 and 37-42 are currently pending in this application.

Applicant hereby requests further examination and reconsideration of the presently claimed application.

***Claim Rejections – 35 U.S.C. § 112***

Claims 23-31 and 33-42 stand rejected under 35 U.S.C. § 112, first paragraph, as not reasonably providing enablement for destroying, inactivating, or inhibiting the growth of any and all viruses, wherein the virus has a lipid envelope. Applicant has amended claim 23 to incorporate the limitations of now canceled claims 33-36 and recite specific viruses. Applicant respectfully requests withdrawal of the rejections.

Claims 23-31 and 33-42 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 23 from which the pending claims depend in the manner recommended by the Office Action. Applicant respectfully requests withdrawal of the rejections.

***Claim Rejections – 35 U.S.C. § 103***

Claims 23-31, 33-39, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vail, III, et al., U.S. Patent Application Publication No. 2004/0009245 (hereinafter “*Vail*”) in view of Clarke, WO 01/05226 (hereinafter “*Clarke*”).

Claims 40-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Vail* in view of *Clarke*, and further in view of Lemelson, U.S. Patent No. 4,856,509 (hereinafter "*Lemelson*"). Claims 33-36 have been canceled. Claims 23-31 and 37-42 depend from claim 23. Thus, the pending claims stand or fall on the application of the cited references to independent claim 23. The United States Supreme Court in *Graham v. John Deere Co. of Kansas City* noted that an obviousness determination begins with a finding that **"the prior art as a whole in one form or another contains all" of the elements of the claimed invention.** See *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 22 (U.S. 1966). Applicant respectfully submits that the cited references do not teach or contain all of the limitations set forth in the pending claims, and therefore do not make obvious the pending claims.

Applicant's claim 1 recites:

A method of destroying, inactivating, or inhibiting the growth or reproduction of a virus comprising administering **an effective amount** of p-menthane-3,8-diol (PMD) wherein the virus has a lipid envelope and wherein the virus is selected from the group consisting of influenza virus; A/Sydney/5/97 virus; virus causing Urbani Severe Acute Respiratory Syndrome (Urbani SARS); Herpes Simplex virus type-1 (HSV-1); and combinations thereof.

See *supra*, emphasis added. Support for this amendment can be found at least in part in the instant application at paragraph [0047]. As noted by the Office Action (see Office Action page 9) *Vail* does not disclose the use of PMD. Consequently, *Vail* is silent as to the use of an effective amount of PMD for destroying, inactivating or inhibiting the growth or reproduction of a virus as recited in Applicant's claim 1. Furthermore, the secondary references cannot remedy the omissions of *Vail* as they too are silent as to the use of an effective amount of PMD for destroying, inactivating or inhibiting the growth or reproduction of a virus as recited in

Applicant's claim 1. In consideration of the foregoing, Applicant respectfully requests withdrawal of the rejections and allowance of the pending claims.

### CONCLUSION

Consideration of the foregoing amendments and remarks, reconsideration of the application, and withdrawal of the rejections is respectfully requested by Applicant. No new matter is introduced by way of the amendment. It is believed that each ground of rejection raised in the Office Action dated June 24, 2009 has been fully addressed. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to telephone the undersigned at the telephone number given below.

Respectfully submitted,  
CONLEY ROSE, P.C.

Date: \_\_\_\_\_

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